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A P P E A R A N C E S:

For the Defendant:

WILLIAM MICHAEL SULLIVAN, JR and PATRICK HOVAKIMIAN
Pillsbury Winthrop Shaw Pittman, LLP
1200 Seventeenth Street NW
Washington, DC 20036
202-663-8280
william.sullivan@pillsburylaw.com
patrick.hovakimian@pillsburylaw.com

ANDREW BURKE MOORMAN
Moorman Law Firm, LLC
416 East North Street
Greenville, SC 29601
864-775-5800
andy@andymoormanlaw.com

1 THE COURT: Okay. First of all, let me see who all
2 I've got here today. I see I have Mr. Andrews for the
3 Government. Where is Ms. Limehouse? Is she coming?

4 MR. ANDREWS: She's not here today, Judge.

5 THE COURT: Oh, okay. Tell her hello for me.

6 MR. ANDREWS: Absolutely.

7 THE COURT: For Mr. Benjamin, I have --

8 MR. SULLIVAN: Bill Sullivan, Your Honor.

9 THE COURT: Bill Sullivan. Okay.

10 MR. HOVAKIMIAN: Patrick Hovakimian, Your Honor.

11 THE COURT: Okay. I know we have several matters
12 that we need to get to. I have one matter, I guess, under
13 advisement that related to the grand jury materials and some
14 notes of the agent. And I've read the grand jury testimony.
15 And there is no mention of any deception by Mr. Benjamin or
16 anything remotely related to that in those grand jury
17 materials. So unless the agent testifies or some other
18 reason why the defense would be entitled to that, I don't
19 think that would be something that needs to happen right now.

20 I also looked at the agent's notes. And I will
21 confess that they are illegible. I mean, I thought that I
22 had seen over the years with some of my law partners the
23 worst handwriting ever. But this is unbelievable. Okay?
24 But we did go through, and where it was possible to figure
25 out what the agent was writing -- again, there was no -- none

1 of the information that you were concerned about being there.
2 So as far as that motion is concerned, I'm going to deny that
3 motion. If at some point those materials become something
4 the Government needs to disclose, I'm sure they will do that.
5 Is that what you understand?

6 MR. ANDREWS: Thank you, Judge. Yes.

7 THE COURT: Okay. All right. Very good. All
8 right. Now that leaves for us --

9 MR. SULLIVAN: If I might, Your Honor. Thank you
10 very much for taking the time to review those materials.

11 THE COURT: Really, I wish I could show you the
12 agent's notes, because I want you to believe just how
13 illegible they are.

14 MR. SULLIVAN: I completely believe the Court. I
15 just want to make sure that my understanding is clear for the
16 record. So despite the fact that the 302 makes
17 representations that Mr. Roderick believed Mr. Benjamin lied
18 or deceived him, which was heavily contested by Mr. Ellerman,
19 counsel for Mr. Roderick, and disputed by Mr. Roderick's own
20 declaration, the representations in the grand jury are
21 consistent with Mr. Roderick's declaration, consistent with
22 Mr. Ellerman's representations, and inconsistent with the
23 302.

24 THE COURT: Well, what I'm telling you is, all I
25 know, he may have information from another source that would

1 allow him to put that in the 302s. But I'm telling you, in
2 the grand jury testimony and the notes, I did not see
3 anything that related one way or another to that.

4 MR. SULLIVAN: Thank you, Judge. I appreciate you
5 taking the time again.

6 THE COURT: Okay. All right. Now that leaves, I
7 believe, the defendant's motion that's at Docket 105 to
8 compel *Brady* disclosure. And I have read your materials on
9 that, but I would be happy to listen to anything else you
10 want to tell me.

11 MR. SULLIVAN: Thanks very much, Your Honor. And I,
12 again, appreciate you taking the time to read our materials,
13 I think we can distill and crystallize the issue as reflected
14 in our reply. All we are looking for here is disclosure of
15 the information that the Government has already determined to
16 be *Brady* in that it is favorable, exculpatory, or material to
17 the defense with regard to the substantive issues,
18 impeachment, sentencing, or punishment.

19 We believe the Government has already ascertained
20 those documents. And there's nothing in the Fourth Circuit
21 to preclude the disclosure of those documents to the defense.
22 As a matter of fact, in many circuits, it's absolutely
23 mandated. The court in *Skilling* said that the Government
24 must disclose. The court in *Skilling* said the Government
25 cannot hide these types of materials in huge document

1 productions. We have a huge document production. We have 16
2 million documents.

3 The *Blankenship* court, a Fourth Circuit Court, not
4 the Fourth Circuit, but a court in this jurisdiction, a
5 parallel court to your own court, has mandated that the
6 Government scrutinize its materials and disclose. And that
7 court even went so far as to say the Government is in the
8 best position to decide what's exculpatory while they
9 concurrently include material to decide which is inculpatory
10 as they build their case.

11 So we believe there's nothing precluding you from
12 simply saying to the Government, whatever you found that's
13 *Brady*, give it to them. It would be economical. It would be
14 efficient. And it would be consistent with the rules
15 outlined in *Brady* and the Justice Department manuals.

16 Now, the Government has cited *Yi* and *Sotomayor*.
17 Those cases are inapposite. *Yi* is a post-conviction case
18 whereby the Court declined the relief sought by the
19 defendant, who was asking for post-conviction de novo review
20 of the Government's materials in a search for *Brady*. We are
21 not asking for that here.

22 And in *Sotomayor*, even though the remedy was denied,
23 the relief was denied there, that's a very different case.
24 That case featured less than 10 percent of the documents
25 issued here, Your Honor. But also, in *Sotomayor*, there was

1 an index. There was particularized documents. There were
2 catalogs of materials. There was an avenue and an
3 opportunity for the defendant to search. We don't have that.
4 We have 16 million documents. We don't have an index. We
5 don't have particularized catalogs. We don't have
6 delineations of categories of documents, nor do we have
7 metadata. We have no metadata for the materials we've
8 obtained for the Government relating to Fluor, which, as you
9 know, is a subcontractor here which was obligated to build
10 the project and which got involved in serious contentions or
11 consciousness between WEC and Fluor in terms of progress,
12 rebaselining and scheduling.

13 You've seen our motion to dismiss. We've outlined
14 our theories of defense and how separate Mr. Benjamin is from
15 what went on at SCANA with regard to representations made to
16 investors, bondholders, and rateholders, which implicates our
17 venue motion, which will come next.

18 Those cases demonstrate that what we are asking for
19 is well-documented, well-established throughout the country.
20 There's an obligation to provide *Brady*. There's an
21 obligation to search for *Brady*. And that we believe was done
22 here. But there is a further --

23 THE COURT: When you say an obligation to search for
24 *Brady*, so, basically, you are saying that of these 16 million
25 documents, you want the Government to go through all 16

1 million documents and tell you the documents they think might
2 be helpful to Mr. Benjamin?

3 MR. SULLIVAN: That's not what we are asking.

4 THE COURT: I hope not.

5 MR. SULLIVAN: What we are asking, as outlined in
6 *Skilling* and *Blankenship*, is that the United States should
7 specifically designate those documents that is already --

8 THE COURT: Already aware of.

9 MR. SULLIVAN: -- already aware of to be *Brady* in
10 light of the definitions of *Brady* I just gave. And I would
11 also further refine that by saying, I think the Court would
12 agree with me the case law does distinguish between
13 disclosure and production.

14 THE COURT: Yes.

15 MR. SULLIVAN: Many of the cases outline how
16 *Skilling* in particular, and I just quoted that, a production
17 which includes *Brady* embedded like the needle in the hay
18 stack of 4 to 5 to 10 million documents and we had 16 --

19 THE COURT: Look, I used to be a plaintiff's lawyer.
20 I'm very familiar with the giant dump of documents in which
21 you are supposed to find something.

22 MR. SULLIVAN: That's good to hear. And I
23 appreciate that, Your Honor. That's all we are looking for,
24 disclosure of known *Brady* material. And as we've
25 demonstrated in our record, we believe known *Brady* material

1 exists, has been found by the Government, is in their
2 possession, and as I said earlier, would represent no burden,
3 no hardship, no prejudice, to simply let the defense know.

4 THE COURT: All right. Thank you. All right.

5 Mr. Andrews, that sounds reasonable. If you already
6 know and you've identified *Brady* material, why wouldn't you
7 disclose that?

8 MR. ANDREWS: Well, so, Judge, I think -- and I just
9 had this conversation with Mr. Sullivan. But there seems to
10 be signals crossed on what the Government's position is on
11 identifying *Brady* material. We have always told the defense,
12 look, we get it, it's a large volume of discovery. We have
13 been over-inclusive in our approach to discovery. And it's
14 not to frustrate the defendant, but, in fact, to give them an
15 ample case and to make sure that we are being overly careful
16 in our approach to disclosure. As we have done that, we have
17 also indicated to the defendant everything that this case is
18 about.

19 There is a speaking indictment in this case with 63
20 paragraphs of factual arguments supporting our theory of the
21 case. Before we ever charged Mr. Benjamin, we gave them a
22 reverse proffer in which we walked through hundreds of slides
23 in a PowerPoint deck making exactly clear upon what documents
24 and what testimony our case in chief was going to be based.

25 Now, we have not, in the course of our four years of

1 investigation in this case, found specific documents that we
2 believe to be exculpatory of Mr. Benjamin. Now, is there
3 information in the discovery that the defendants may find to
4 be favorable to their case? I'm sure that there is. And I
5 have no doubt that with their team of attorneys, they will
6 find those documents and put them together in a manner that
7 they can present to the jury. And that's exactly their job.
8 And it's exactly not our job.

9 I understand the representation he's making. I
10 think they've distilled their case down to something perhaps
11 less than we understood it to be when it started. I think
12 they understand that the law does not compel the Government
13 to go through all of those pages of discovery and identify
14 for them the exculpatory information. All of that
15 information has been disclosed. It is word searchable.

16 With respect to the Fluor production, I understand
17 they've sought a third-party subpoena for those documents.
18 We have as well. There should be metadata in that
19 production. I think that issue should be cured. That's the
20 only notice that I'm aware of that they don't have what they
21 need to adequately mine the information we have produced in
22 this case to build a defense for their client.

23 Look, Judge, if we were going to talk about specific
24 documents and evidence, we are very aware of our obligations
25 under *Brady*. And we are happy to have that conversation.

1 But we have no time represented to them that we have a box
2 marked *Brady* material in the office that we are hiding from
3 them or otherwise not identified and we are hoping that they
4 don't find in the discovery.

5 THE COURT: We did get a box of documents one time
6 for a big defense firm that said, "Do not produce." And the
7 case resolved shortly thereafter.

8 MR. ANDREWS: I'm sure it did.

9 THE COURT: It does happen.

10 MR. ANDREWS: We don't have that box, Judge. We
11 have given them everything we have, which is not an approach
12 that we are obligated to take. I would say, we've given them
13 things that are not Rule 16, that are not *Brady*, *Giglio* or
14 *Jencks*, but, nevertheless, they were received by us in the
15 course of the grand jury investigation. And we are handing
16 that over anyway. And, again, that's not to overburden the
17 defendants, who do have the resources at their disposal to
18 review those documents and mine them and word search them on
19 the platforms they use for document review. But it's rather
20 to make sure that we are being overly careful. This is a
21 complex case. We understand that. There's a lot of
22 different potential avenues out there for the defense to
23 take. But we have not frustrated them in any way.

24 If anything like that arises where we find documents
25 that we really believe are exculpatory, we don't have any

1 objection to identifying them. We do contest --

2 THE COURT: Well, I think that in the course of your
3 preparation, if you do identify documents that are
4 exculpatory, then that's when you do need to disclose those
5 to the defendant.

6 MR. ANDREWS: That's right. And just so we are
7 clear about disclosure, I think what we are talking about
8 identification, because the documents have already been
9 given.

10 THE COURT: Everything's been disclosed.

11 MR. ANDREWS: That's right, it's been disclosed,
12 it's been provided. And we throw around the word *Brady* a
13 lot, but an element of *Brady* is suppression. It necessarily
14 involves the withholding and the suppression of evidence.

15 And just to be clear, when *Skilling* articulated the
16 rule here, it said expressly not that *Brady* obligates the
17 specific identification of exculpatory information. That is
18 the general rule that the court articulated in that case. It
19 is in our brief.

20 So, Judge, look, we will continue to honor and
21 uphold our discovery obligations in this case.

22 THE COURT: So what you are telling me is that you
23 haven't found anything that you truly believe to be
24 exculpatory? So you haven't identified anything to the
25 defendants?

1 MR. ANDREWS: We have disclosed everything and not
2 identified anything.

3 THE COURT: Okay. All right.

4 MR. ANDREWS: That's correct.

5 THE COURT: And what is your position about going
6 forward? If you are continuing, during your preparation for
7 the trial, you determine that something is exculpatory, is it
8 your intention to identify that to the defendant?

9 MR. ANDREWS: Judge, it would continue to be our
10 assertion that that is not legally obligated. But we will
11 have those conversations. If we see anything that is
12 alarming to us in the way that it stands out as
13 exculpatory -- here's the trap that I think we get into.
14 There is obviously subjectivity here about what the
15 defendants -- their defenses are going to be. And we can't
16 anticipate all of those. There are certainly going to be
17 documents --

18 THE COURT: There is an element of good faith here.

19 MR. ANDREWS: That's right.

20 THE COURT: When you are going through those
21 documents, if you've at least thought, hmmm, this might be a
22 problem for us --

23 MR. ANDREWS: Judge, let me identify a specific
24 example. The defendants are well aware that we've had three
25 individuals from the V.C. Summer nuclear plant who have pled

1 guilty to felony offenses in this case. Right? Everybody
2 knows that. Kevin Marsh, Steve Byrne, and Carl Churchman
3 have pled guilty to felonies. Their plea agreements, Mr.
4 Marsh's sentencing proceeding, all of that is public. The
5 defendants have it. Their 302s, their memorandum where they
6 have conceded crimes, where they have conceded fault, all of
7 that has been disclosed to the defendant. Obviously, you
8 know, those folks may all be, or some of them, on our witness
9 list at trial. That is all available Giglio impeachment
10 evidence. They know that. And they are welcome to use it.
11 We don't have any opposition to that. And we've had
12 conversations with them about those particular witnesses as
13 well.

14 Now, for the other, you know, 16 million pages of
15 documents that are out there, you know, we don't want to get
16 into a game of going through and saying --

17 THE COURT: Well, I am not asking you to go through.
18 I'm saying in the course of going through the documents for
19 purposes of preparing your case -- not asking you to go
20 through and locate exculpatory information out of 16 million
21 documents. But in the course of preparing your case, if you
22 do, in the course of that, discover something that you feel
23 is potentially exculpatory, what is your intention about
24 disclosing that?

25 MR. ANDREWS: If we find something that is

1 potentially exculpatory, then we will have a conversation
2 with them about that.

3 THE COURT: Okay. So you say you will have a
4 conversation about that. I don't know what that means.

5 MR. ANDREWS: We will inform them of that particular
6 document.

7 THE COURT: Okay. All right.

8 MR. ANDREWS: But I want to be clear, though, that
9 we do not intend to go through --

10 THE COURT: And I don't expect you to.

11 MR. ANDREWS: -- the rest and identify.

12 MR. SULLIVAN: Your Honor, you have acutely hit it
13 on the head right now, right then. Just before you said,
14 might be a problem. That is a good way to identify our
15 perception of what *Brady* is in terms of favorability,
16 exculpatory nature, material to the defense. In
17 conversations with the Government, which we have outlined in
18 our motion, we have learned that: A, this case was too big
19 to do a *Brady* review; B, yes, we found stuff that are
20 inconsistent with our prosecution theory. Yes, we found
21 stuff that we will have to deal with at trial. That
22 dovetails precisely with your delineation of "might be a
23 problem."

24 And yet, today, they refused to admit that they have
25 such material after telling us that they do, which is totally

1 consistent with what you said in terms of describing such
2 material. So I posit that they have such material. They are
3 obligated to produce it today or in short form, because it
4 has been located, consistent with your delineation of what
5 *Brady* means. And we agree with your assessment.

6 THE COURT: All right. Well, Mr. Sullivan, what you
7 are suggesting is that Mr. Andrews has information that he
8 thinks is exculpatory, particularly he can identify documents
9 that are exculpatory, and he's not giving those to you. I
10 don't accept that. I accept what the Government says, that
11 they understand what their obligations are under *Brady*. They
12 know what they are supposed to do with documents that they
13 have identified as exculpatory to date. They say none.

14 If in the course of preparing their case and
15 continuing to review these documents, as you will be doing as
16 well, if they come across something that they think is
17 exculpatory, they are going to have to turn it over. And
18 they tell me that they will. So I don't see what the problem
19 is here then.

20 MR. SULLIVAN: My only concern, Your Honor, is that
21 their view of *Brady* is extremely limited and not consistent
22 with yours or mine.

23 THE COURT: And they probably aren't. But there's
24 no way for us to change that, really. I mean, we have to
25 rely on their good faith. They know what's a problem for

1 their case. And I believe that all the lawyers here are
2 acting in good faith, and that if Mr. Andrews does come
3 across something that he knows he's going to really have to
4 deal with, he will identify that document for you.

5 MR. SULLIVAN: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. HOLLIDAY: Your Honor, if we could, I have to
8 take a half a step back. At the very end of your discussion
9 regarding the grand jury material and Agent Hawkins notes and
10 all that stuff, Mr. Sullivan opined that does that mean, Your
11 Honor, that you are accepting the Ellerman/Roderick version
12 of how the interview took place?

13 THE COURT: No, I am not. That's not my job to do
14 that. I looked at those materials to see if, in fact, there
15 was testimony that Mr. Sullivan suspected was there, and it
16 was not.

17 MR. HOLLIDAY: Okay. Thank you, Your Honor. I
18 appreciate it.

19 THE COURT: All right. Okay. I think that
20 leaves -- I'm sorry, Mr. Sullivan, something else you wanted
21 to say?

22 MR. SULLIVAN: No, I was just leading on to the next
23 motion.

24 THE COURT: All right. The venue issue. All right,
25 Mr. Sullivan.

1 MR. SULLIVAN: As we outlined in our papers in terms
2 of what the exchange of pleadings has been on this issue, I
3 think it's fair to say that the Government, if not outright
4 conceding, understands our position with regard to the
5 ratepayer, bondholder, investor issue with regard to the
6 population of Columbia, which would be jury area B.

7 Sixty-five percent of those individuals were ratepayers. We
8 are concerned that the Government has styled this case as a
9 case whereby SCANA representatives and Mr. Benjamin have
10 conspired to defraud these individuals, compelling them to
11 pay excess rates for their utilities because of that fraud.
12 Obviously, we contest that. We don't believe the Government
13 has shown or can show a conspiracy between SCANA and Mr.
14 Benjamin, SCANA and Westinghouse, Mr. Benjamin and anyone at
15 Westinghouse. But, nevertheless, those are the allegations,
16 Your Honor.

17 We are concerned that individuals who are going to
18 be listening every day to how they were victimized, despite a
19 robust defense, which I believe that the defense team will
20 provide, are going to be inherently prejudiced in terms of
21 rendering a fair and objective opinion on the facts in this
22 case. We have 90 percent of the individuals in the
23 Greenville pool not having an affiliation with Columbia --
24 I'm sorry, with Dominion or SCANA as a result of the merger.
25 They are folks who get their electricity from Duke. So we

1 think it makes perfect sense to use a Greenville jury pool.

2 However, there is a dispute, as I understand it, as
3 to how to get those jurors. We don't think that it makes
4 sense to separate the jurors from the trial site. One, they
5 are going to be compelled to either travel two hours each way
6 four hours a day, or they are going to be compelled to be
7 sequestered, which is a gross and very difficult
8 inconvenience for a jury, for jury members.

9 Secondly, we think that the pool of available jurors
10 are not going to represent a cross-section of -- a fair
11 cross-section of the community for Mr. Benjamin, because a
12 lot of those people will be eliminated simply by virtue of
13 the sequestering or the travel. As we've outlined, we are
14 going to have individuals who have young children, K through
15 12. We are going to have individuals who need to care for
16 sick or needy family members that can't be accommodated at
17 night, even if they sit at a jury during the day. And we
18 also have people with medical infirmities that won't be able
19 to sustain a two-hour ride in the car, circulatory problems,
20 et cetera. So we are going to be unfairly limiting the very
21 jury pool that we think is the best jury pool for Mr.
22 Benjamin in light of the ratepayer issue. So it simply makes
23 no sense.

24 We believe that to provide due process for Mr.
25 Benjamin in a fair and impartial setting, we need jurors who

1 are not affiliated with the utilities at issue here. And we
2 need jurors who can pay attention to the case, won't
3 otherwise be distracted, and most importantly, a pool that's
4 not limited by virtue of the individuals who won't be able to
5 be seated because of a medical or personal inconvenience. So
6 we submit that we simply try the case in Greenville.

7 *Farkas* factors do not implicate that in any way,
8 shape, or form. They are basically neutral. There's nothing
9 in those factors that mandates that for any particularized
10 interest noted there, the case has to be tried in Columbia.
11 So that is our position, Your Honor.

12 THE COURT: All right. Thank you.

13 Mr. Andrews.

14 MR. ANDREWS: Judge, we would agree with the defense
15 that the factors do not support a venue transfer when you are
16 looking at the convenience to the parties, when you are
17 looking at the conveniences to the witnesses. It's going to
18 be the same whether it's here or in Greenville.

19 THE COURT: I realize there's going to be some
20 inconvenience. My biggest concern is the jurors.

21 MR. ANDREWS: So I want to talk about that. Because
22 in the defendant's motion, most of the press clippings that
23 they cite to are anger at SCANA and its executives. We have
24 a different case here. Jeff Benjamin was the vice president
25 of Westinghouse. He worked in Pennsylvania. He now lives in

1 Colorado.

2 THE COURT: Are you now arguing that you don't want
3 the jury pool to come from the upstate? You want it to be
4 here?

5 MR. ANDREWS: Let me make it clear.

6 THE COURT: I thought you had basically said you
7 didn't oppose drawing the jury from up --

8 MR. ANDREWS: That's our fallback position, Judge.
9 Our first position is, we can do this trial here in Columbia
10 with a Columbia jury pool, and that the rules -- the factors
11 that support Rule 18 and Rule 21, the constitutional
12 limitations, none of those are supported here. And the
13 primary reason is, this is not the same case, necessarily, as
14 the SCANA case. Yes, it involves VC Summer. But it's a
15 different party. And there are different players involved in
16 the fraud that occurred here. The \$100 million a month that
17 Jeff Benjamin has been charged with defrauding from the
18 owners --

19 THE COURT: Let's just assume that I don't agree
20 with you about the first part. All right. I believe I saw
21 in your papers that if we did select a jury from the upstate
22 pool, you still thought that we should bring the jurors here
23 and have the trial here in Columbia.

24 MR. ANDREWS: That's correct.

25 THE COURT: Why?

1 MR. ANDREWS: Well, Judge, we don't think there's
2 any justification to move all of the resources of the Court
3 and, you know, our prosecuting entity up to Greenville for
4 weeks on end.

5 THE COURT: It's a really nice courthouse.

6 MR. ANDREWS: It's a beautiful courthouse. There's
7 no --

8 THE COURT: It's empty. We would have the whole
9 courthouse to ourselves.

10 MR. ANDREWS: I was there for the unveiling. It's
11 amazing. I have no grievances with the Greenville
12 courthouse. But, Your Honor, our first position is this --
13 and, honestly, the fallback is us candidly trying to be
14 reasonable and find some way to find a middle ground on just
15 yet another issue that's been put before the Court. Our
16 primary position is that this is a case that can be tried in
17 Columbia, that a number of years have passed, that there's no
18 public furor against Jeff Benjamin. People here in Columbia
19 don't know who Jeff Benjamin is.

20 And to the extent that they know this story, they
21 think about SCANA, they think about SCE&G. They are not
22 thinking about Westinghouse. We can through voir dire and
23 through jury selection, absolutely weed out people who
24 have -- who cannot be fair and impartial or people who have
25 personal relationships to any of the entities that were on

1 site in Jenkinsville. And that is the proper procedural
2 mechanism to pick a fair and impartial jury. We can do that
3 here in Columbia.

4 Now, it has been our fallback position. If the
5 Court is inclined in some way to not pick a Columbia jury
6 pool, then it is at least theoretically possible for us to
7 pick a Greenville jury pool and still try the case in
8 Columbia. That is our position, Judge.

9 THE COURT: Okay. What about the inconvenience to
10 the jurors? I mean, obviously, I would prefer for it to be
11 here. Certainly, it would be easier for me and it would be
12 easier for you. For everybody else, it wouldn't be easier.
13 So -- and I'm willing to travel to Greenville and stay in
14 Greenville for three weeks, or whatever I need to do, instead
15 of asking the jurors to do that.

16 MR. ANDREWS: Well, Judge --

17 THE COURT: I'm sure that -- I mean, y'all have your
18 offices all over the state. To me -- and the witnesses are
19 kind of a neutral issue. I mean, people are going to be
20 flying in and traveling from somewhere depending on where in
21 the trial their testimony might be needed. I don't see that
22 being a huge factor. I'm concerned about the jury.

23 MR. ANDREWS: Judge, look, I am not going to
24 represent here that there would be no imposition on the jury.
25 There would be. And, honestly, the issue with the

1 convenience to the parties and the witnesses, that's why I
2 come back to question one, which is, do we need to draw a
3 Greenville jury pool at all? And I think we don't. That is
4 our first position in this case. I am not going to disagree
5 with you that it would be inconvenient for the jurors. And
6 we know that it's a service -- already a difficult service to
7 be picked for a three-week jury pool.

8 THE COURT: And you know this, of course, applies to
9 me too, even though they could stay in a hotel here, they
10 can't stay over the weekend. So they all got to travel on
11 Friday, probably on Sunday to get back here in time to start
12 the trial. It just -- I would just put them up in a hotel.
13 That doesn't sound so bad. But it really is much more
14 disruptive than letting them sit in the Greenville and just
15 spend the days with us.

16 So, all right, Mr. Sullivan.

17 MR. SULLIVAN: I think you've articulated everything
18 I might have said a few minutes ago. We think the victimhood
19 of the jurors is a per se disqualifier. The convenience of
20 the jury is paramount here. We wouldn't have a
21 cross-sectional pool. And, frankly, I didn't even mention,
22 there is much more adverse press in this area, much more
23 press saturated in this area than up in Greenville. Thank
24 you, Your Honor.

25 THE COURT: All right. I think what I'm going to do

1 on this is, I'm going to grant the motion, even though I'm
2 pretty confident that we could, with enough time and effort,
3 draw a jury from this section of the state and give Mr.
4 Benjamin an impartial jury, I think the safer and surer way
5 to do that is to draw the jury from the upstate. So that's
6 what I think we are going to do on that.

7 Now, the next is, you know, it's going to be an
8 inconvenience to the lawyers here in Columbia that are the
9 lead on the case. It's going to be an inconvenience to me.
10 But having the case tried actually in Greenville, I think
11 will help us as far as the jury's participation concerns. I
12 mean, if we do it here, I can see with COVID, excuses, people
13 are getting tired after a week or so of being out of town,
14 the next thing I know, I have COVID exposures and, you know,
15 who knows what could happen. So even if we, you know, maybe
16 draw four alternates or even more, we could still run into
17 problems. So I think I'm going to grant the motion. We will
18 draw the jury from the upstate pool. And we will have the
19 trial in Greenville. Okay.

20 MR. SULLIVAN: Thank you, Your Honor.

21 MR. ANDREWS: Thank you, Judge.

22 THE COURT: All right. Anything further on any of
23 this? All right. Do we want to maybe schedule a pretrial
24 conference or something in advance of that?

25 THE COURT DEPUTY: There's already one scheduled.

1 THE COURT: When is that?

2 THE COURT DEPUTY: In September.

3 MR. ANDREWS: Judge, I have two other housekeeping
4 matters, if I could.

5 THE COURT: Okay.

6 MR. ANDREWS: We mentioned this in our most recent
7 motion, but a superseding indictment is imminent. I will say
8 that it is some wordsmithing. It is not substantive. We
9 have not added counts. We have not materially changed
10 counts. But there are some differences here and there we
11 thought were appropriate. And that should be available to
12 the defendant and to the Court we think very soon. So I just
13 want to mention that. It will, I believe, affect their
14 pending motion to dismiss. Of course, they can look at the
15 superseding indictment and decide whether they want to
16 proceed with the motion, amend the motion. I suppose that's
17 entirely within their discretion. But I did want to raise
18 that for the Court, that that is happening.

19 THE COURT: Okay.

20 MR. ANDREWS: The other two issues, if I could
21 briefly in regards to scheduling, you will recall at the last
22 pretrial, we had really insisted upon the May trial date. We
23 feel like this case is ready to try. It has now been
24 continued to October. We really want to be able to lock in a
25 date, a date certain for the trial. We have a lot of

1 witnesses coming from a lot of places around the country.
2 The calendar indicates that we are drawing a jury on
3 Wednesday, October 4th. We are flexible as to what that
4 first day of trial is, whether it's the date to follow or the
5 following Tuesday after the holiday.

6 I spoke with Bill Sullivan briefly about this a
7 moment ago. It seems like we are on the same page in terms
8 of it being appropriate for the Court to set a date certain
9 so we can start getting in motion --

10 THE COURT: I'm happy to do that because there's so
11 many witnesses that are going to be traveling. It's just --
12 could be a mess.

13 THE COURTROOM DEPUTY: Jury selection date may
14 change transferring it to Greenville.

15 THE COURT: I think I asked Kathy to check with Fred
16 on that.

17 THE COURT DEPUTY: Fred doesn't control that, if you
18 can still have jury selection on October 4th.

19 THE COURT: Because he thought that wasn't going to
20 be a problem, but maybe we can just confirm that.

21 THE COURT DEPUTY: I will take care of that when
22 this hearing is over.

23 THE COURT: Of course, we have administrative issues
24 that, since we are moving the case to Greenville, my
25 intention was to keep the same jury selection date, just do

1 it in Greenville. And we had some preliminary discussions
2 with the folks up there. And I'm fairly confident that we
3 can do that. But I'm informed that the coordinator up there
4 isn't in the loop yet. And so we've got to verify that. So
5 this might change. But let's just proceed as if I'm going to
6 be able to have the jury selection on October 4th. And
7 that's a Wednesday or a Thursday?

8 MR. ANDREWS: That's a Wednesday, Your Honor.

9 THE COURT: Wednesday in Greenville.

10 MR. ANDREWS: Judge, we would not be opposed if the
11 Court -- whether it's on the 4th or not, if in the next
12 scheduling order, the Court wants to enter not just a date
13 for jury selection, but for actually beginning of the trial
14 proceedings, we would defer to the Court's judgment on that,
15 but we would welcome that, because it would give us some
16 certainty for planning.

17 THE COURT: Let me ask you what your general
18 preference would be. If we have a jury selection on, say, a
19 Wednesday or a Thursday, and it may be October 4th, would
20 you -- the parties' preference, would it be to begin the
21 trial immediately, the morning after, or that following
22 Monday or Tuesday, depending on whether it's a holiday?

23 MR. ANDREWS: Your Honor, that is a federal holiday,
24 that following Monday. And so it would be a long weekend.
25 We would be fine just to start the following Tuesday after

1 jury selection.

2 THE COURT DEPUTY: That would be the 10th.

3 MR. SULLIVAN: No objection here, Your Honor.

4 THE COURT DEPUTY: October 10th.

5 THE COURT: October 10th?

6 MR. ANDREWS: That's correct.

7 THE COURT: All right. Then let's tentatively have
8 the jury selection on the 4th and we will start on the 10th.
9 If I have a problem with the folks in Greenville, I will get
10 that nailed down today. And I will enter an order that sets
11 all that out. Okay?

12 MR. ANDREWS: Judge, just one other scheduling
13 issue, Judge. We now have -- if I'm counting correctly,
14 we've resolved three pretrial motions. There's another
15 pending. There will inevitably be motions in limine
16 immediately before trial. It would be helpful for the
17 Government for the Court to impose some kind of motions
18 deadline, perhaps in May, so that if we are going to see any
19 other motions with regard to dismissing the indictment or for
20 discovery or anything else, that we just get those out there
21 so that we can be resolving those and not stepping on the
22 toes of motions in limine, motions for evidence, and other
23 things like that before trial.

24 MR. SULLIVAN: Yes, Your Honor. I've had
25 preliminary discussions with Mr. Holliday about doing

1 precisely that. We are amenable to that. Only caveat would
2 be to the extent that evidentiary issues pop up as we
3 continue to investigate the case, we are going to have to
4 make those motions as we learn about the reasons therefore.
5 So motions in limine, we won't be able to specifically
6 schedule. But we can set a generalized motion schedule we
7 can adhere to --

8 THE COURT: Why don't you all put something together
9 that you agree to and then submit it to me and I will enter
10 it.

11 MR. ANDREWS: We can do that, Judge.

12 MR. SULLIVAN: My only other thought was, in light
13 of the Greenville move, we would have difficulties if
14 Greenville cannot accommodate us on October 4 or later. If
15 Greenville is going to try to suggest an earlier date, in
16 light of some of the things we need to do, that would be more
17 difficult. So I would anticipate that we will hold October
18 4, or if necessary, maybe a bit beyond it. But if Greenville
19 only has dates in September or August, we can't accommodate
20 that, unfortunately, Your Honor.

21 THE COURT: Well, we won't do it. It's going to be
22 October.

23 MR. SULLIVAN: All right. Great. Thank you so
24 much.

25 THE COURT: All right. Anything further?

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MR. ANDREWS: Nothing further.


MR. SULLIVAN: Thank you for your time, Your Honor.

(Whereupon, proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter